

Retailers of motor fuel or gasohol who have accepted MPC from their customers may not transfer that MPC to their suppliers or distributors to satisfy prepaid Retailers' Occupation Tax liabilities. See generally 86 Ill. Adm. Code 130.331. (This is a PLR).

June 8, 1999

Dear Ms. Xxxxx:

This Private Letter Ruling, issued pursuant to 2 Ill. Adm. Code 1200 (see enclosed), is in response to your letter of March 5, 1999. Review of your request for a Private Letter Ruling disclosed that all information described in paragraphs 1 through 8 of subsection (b) of the enclosed copy of Section 1200.110 appears to be contained in your request. This Private Letter Ruling will bind the Department only with respect to COMPANY for the issue or issues presented in this ruling. Issuance of this ruling is conditioned upon the understanding that neither COMPANY nor a related taxpayer is currently under audit or involved in litigation concerning the issues that are the subject of this ruling request.

In your letter, you have stated and made inquiry as follows:

Please issue a Private Letter Ruling on the following situation:

We have just been made aware of the Manufacturer's Purchase Credit procedure. We have earned credits for 1998 and would like to apply these credits to the sales tax on our fuel purchases for our ready-mix concrete trucks.

The problem arises in the fact that COMPANY buys fuel from BUSINESS who also delivers the fuel. As the credits are not transferable, can we use our credits to pay BUSINESS., who would turn these credits in to the refinery when they pay their bill?

As the truck company buys large quantities of fuel, they get quantity pricing which we would not get if we have to buy the fuel directly from the refinery. Also, the truck company gets their fuel from many different suppliers, based on the best rate. We would not be able to set up accounts at all these refineries.

We would like to continue to buy our fuel from the truck company as this is the easiest and most economical way to purchase fuel.

A prompt reply would be greatly appreciated as we need to start using the credits as soon as possible to avoid losing credits due to the expiration date of the credits.

Accumulated Manufacturer's Purchase Credit (MPC) may be used by COMPANY to satisfy its Use Tax liability on the portion of its purchases of motor fuel that is used in the mixing of ready-mix concrete. However, if the company from which the motor fuel is purchased, BUSINESS., is not a licensed distributor or supplier, BUSINESS. will not be allowed to transfer the MPC to its suppliers to satisfy the Retailers' Occupation Tax prepayment obligations of BUSINESS. A motor fuel retailer

may not use MPC that it has received to satisfy its prepayment of Retailers' Occupation Tax liabilities with its suppliers or distributors.

The State of Illinois provides a manufacturer's purchase credit on the purchase of tangible personal property that qualifies for the manufacturing machinery and equipment exemptions or graphic arts machinery and equipment exemptions provided under the Use Tax Act and the Service Use Tax Act. See the enclosed copy of 86 Ill. Adm. Code 130.331. The credit may be used to satisfy Use Tax or Service Use Tax liability that is incurred on the purchase of production related tangible personal property that does not qualify for the manufacturing machinery and equipment exemption. The credit may only be applied to the 6.25% State rate of tax incurred and is a non-transferable credit. See subsection (b)(2) of Section 130.331.

The term "production related tangible personal property" means all tangible personal property used or consumed in a production related process by a manufacturer in a manufacturing facility in which a manufacturing process described in Section 2-45 of the Retailers' Occupation Tax Act (35 ILCS 120/2-45) takes place, and all tangible personal property used or consumed by a manufacturer in research and development regardless of use within or without a manufacturing facility. See 35 ILCS 105/3-85 and 86 Ill. Adm. Code 130.331(b)(3). The Department's administrative rules specifically state that fuels used by a manufacturer in a manufacturing facility will qualify as production related tangible personal property. See the enclosed copy of 86 Ill. Adm. Code 130.331(b)(4). The mixing of cement by ready-mix trucks is considered to be manufacturing of cement. Van's Material Company, Inc. v. Department of Revenue, 131 Ill. 2d 196, 545 N.E.2d 695 (1989).

To the extent that the fuel is used in the ready-mix trucks for the mixing of the ready-mix concrete, that fuel would qualify as production related tangible personal property. Please note that use of the fuel for purposes other than the manufacturing of the cement, such as transportation, would not qualify as production related tangible personal property. The Department recognizes that a truck which mixes ready-mix concrete while transporting the ready-mix concrete to or from a job site, uses fuel for both manufacturing and transportation purposes. COMPANY must determine the percentage of fuel that is used in such a situation for mixing the ready-mix concrete. COMPANY can then satisfy its 6.25% State rate of Use Tax or Service Use Tax liability that is incurred on the purchase of that fuel. Please note that the types of documentation used to verify the percentage of fuel used in such a production related process (mixing of ready-mix concrete by a ready-mix truck) would generally be the same documentation that may be used when seeking a refund of motor fuel tax under 86 Ill. Adm. Code 500.235, copy enclosed. You will be required to document the amount of fuel used the mixing of ready-mix concrete versus the amount of fuel used in transporting the ready-mix. This documentation must be retained for inspection by the Department's auditors.

COMPANY may provide an ST-16-C, Manufacturer's Purchase Credit Certificate, or may incorporate such information into its purchase orders for the purchase of production related tangible personal property. Your suppliers (including BUSINESS, if it is making retail sales of fuel) may then apply the MPC they receive against their Retailers' Occupation Tax liability in an amount not to exceed the 6.25% State rate incurred on those sales.

Please note that retailers of motor fuel who are not licensed distributors or suppliers, as defined in the Motor Fuel Tax Law (35 ILCS 505/1 et seq.), must prepay to their distributor or supplier a prepayment of Retailers' Occupation Tax in an amount of 4 cents per gallon of motor fuel and 3 cents per gallon of gasohol. 35 ILCS 120/2d. Since MPC is specifically not transferable, retailers of motor fuel or gasohol who have accepted MPC from their customers may not transfer that MPC to their suppliers or distributors to satisfy prepaid Retailers' Occupation Tax liabilities.

The facts upon which this ruling are based are subject to review by the Department during the course of any audit, investigation, or hearing and this ruling shall bind the Department only if the material facts as recited in this ruling are correct and complete. This ruling will cease to bind the Department if there is a pertinent change in statutory law, case law, rules or in the material facts recited in this ruling.

I hope this information is helpful. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.